

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

COURTNEY COBBS,

Plaintiff,

v.

Case No. 18-C-338

RICHARD CHIAPETE, et al.,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff Courtney Cobbs, who is currently representing himself and serving a state prison sentence at Oshkosh Correctional Institution, filed this action pursuant to 42 U.S.C. § 1983, challenging the constitutionality of Wis. Stat. § 974.07(6) and seeking to compel Defendants to allow him to submit certain evidence for DNA testing related to his armed robbery conviction. The court designated Magistrate Judge William E. Duffin to hear and determine any pretrial matter pending before the court in accordance with 28 U.S.C. § 636(b)(1)(A) and (B). Defendants filed a motion to dismiss on May 15, 2018. On July 19, 2018, Magistrate Judge Duffin submitted his Report and Recommendation that Defendants' motion to dismiss be granted. Cobbs filed a timely objection. For the reasons below, the court overrules Cobbs' objections and adopts Magistrate Judge Duffin's Report and Recommendation.

The Supreme Court has recognized that there is no substantive due process right to DNA testing and has concluded that a state's implementation of certain procedural limitations, such as establishing relevance, on access to DNA evidence is constitutionally permissible. *See District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52 (2009). Here, Cobbs seeks to

test the blood collection kits containing swabs from a barbed wire fence and jean fibers, but he has not established that the results of these tests would be relevant to the prosecution that resulted in his conviction. As the trial court noted, DNA testing, regardless of its results, at most would have provided further evidence against Cobbs, given the fact that it would not have excluded him as one of the bank robbers. He had no due process right to that evidence within the meaning of *Osborne*. For this reason, and the reasons set forth in the Magistrate Judge's report and recommendation, the motion to dismiss (ECF No. 26) is **GRANTED** and the case dismissed. The Clerk is directed to enter judgment accordingly.

SO ORDERED this 28th day of August, 2018.

s/ William C. Griesbach

William C. Griesbach, Chief Judge
United States District Court